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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,147	07/28/2003	Perry H. Monitto	1060-120	6568
28249	7590	06/10/2005	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553			HAN, JASON	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/629,147	Applicant(s) MONITTO, PERRY H.	
	Examiner Jason M. Han	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20040116</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because of lack of clarity and unacceptable photographs. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.
2. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

### ***Specification***

3. The disclosure is objected to because of the following informalities:
  - a. Page 1: "Field of the Invention" should not be underlined, so as to remain consistent with format;

b. Page 2, Paragraph 6, Line 6: Grammatical error – “an one-piece” should read as “a one-piece”;

c. Page 5, Paragraph 22, Line 5: Grammatical error – “a generally a T-shaped” should read as “a generally T-shaped”;

Appropriate correction is required.

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: “Fluid Motion Floor Lamp with Expandable Base”.

#### ***Claim Objections***

5. Claim 4 is objected to because of the following informalities: Applicant recites the limitation, “the ratio of the width of the base to the width of the pedestal is greater than 5:1”, which is not supported by the disclosure. The examiner has assumed that the applicant is referring to the ratio of the length of the base to the width of the pedestal being greater than 5:1. Appropriate correction is required.

6. Claim 20 is objected to because of the following informalities: Typographical error – “on” should read as “one” inline 2 of the claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Whittington (U.S. Patent 5954426).

Whittington discloses a floor lamp including:

- A pedestal [Figure 1: (20)];
- A base [Figure 1: (40)] having at least upper [Figure 1: (36)] and lower parts [Figure 1: (28)], whereby the base is attached at the lower part to the pedestal, and the ratio of the length of the base to the width of the pedestal is less than or equal to 6:1;
- A housing [Figure 1: (32)] attached to the upper part of the base and attachable to a light source [Figure 3: (12)] for providing light therefrom; and
- A container [Figures 1, 3: (34)] having at least an underside [Figures 1, 3: proximate (30)] that is attached to the housing, and wherein the light from the light source in the housing can be directed to the underside of the container.

8. Claims 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Whittington (U.S. Patent 5954426).

9. With regards to Claim 18, Whittington discloses a floor lamp including:

- A pedestal [Figure 1: (20)];
- A base [Figure 1: (40)] having at least upper [Figure 1: (36)] and lower parts [Figure 1: (28)], whereby the ratio of the length of the base to the width of the pedestal is less than or equal to 6:1, and the upper part of the base is attachable to a light source [Figure 3: (12)] for providing light therefrom; and

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- A container [Figures 1, 3: (32, 34)] having at least an underside [Figures 1, 3: proximate (30, 32)] that is attached to the upper part of the base, and wherein the light from the light source illuminates through the underside of the container.

10. With regards to Claim 19, Whittington discloses the container being transparent or translucent [Figure 1: (32); Column 3, Lines 46-49].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) as applied to Claim 1 above, and further in view of Smith (U.S. Patent 3387896).

12. With regards to Claim 2, Whittington discloses the claimed invention as cited above, but does not specifically teach the container including at least two materials, and the movement of at least one of the at least two materials inside the container being displayed when the light from the light source in the housing is applied to the container.

Smith teaches a display device including a housing [Figure 1: (11)] having a light source [Figure 2: (13)] disposed on the underside of a container [Figures 1-2: (1)] for lighting at least two materials therein, whereby the movement of at least one of the at

least two materials inside the container is displayed when the light from the light source in the housing is applied to the container.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the display device of Smith so as to enhance the aesthetic appeal of said lamp. In addition, it would have been obvious to one ordinarily skilled in the art at the time of invention to mount the display device of Smith to the pedestal of Whittington to provide greater illumination to surrounding areas via a higher disposition. Such a configuration is commonly known within the art and would also add to the conspicuousness of the display.

13. With regards to Claim 3, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the ratio of the cumulative length of the base, the housing, and the container to the width of the pedestal being less than 7:1.

14. With regards to Claim 4, Whittington in view of Smith discloses the claimed invention as cited above. Though Whittington in view of Smith does not specifically teach the ratio of the length of the base to the width of the pedestal being greater than 5:1, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ratio of the length of the base to the width of the pedestal, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. In this case, determining a suitable range for the height of the lamp would have been obvious to one ordinarily skilled,

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whereby a greater height would add to aesthetic appeal and conspicuity, but add to instability.

15. With regards to Claim 5, Whittington in view of Smith discloses the claimed invention as cited above. In addition, both Whittington [Figure 3: (12)] and Smith [Figure 2: (13)] teach the light source including a light bulb.

16. With regards to Claim 6, Whittington in view of Smith discloses the claimed invention as cited above, but neither specifically teaches the housing being integrally attached to the base. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the housing integral with the base, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). In this case, making integral the housing and base could add to aesthetic appeal and reduce costs via manufacturing of fewer components.

17. With regards to Claim 7, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the pedestal being substantially circular in shape [Figure 1: (20)].

18. With regards to Claim 8, Whittington in view of Smith discloses the claimed invention as cited above, but neither specifically teaches the base being substantially frusto-conical in shape. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the base into a frusto-conical shape, since it has been held to be within the general skill of a worker that mere



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change of form or shape of an invention involves only routine skill in the art. *Span-Deck Inc. c. Fab-Con, Inc.* (CA 8, 1982) 215USPQ 835. In this case, a frusto-conical shaped base may add to aesthetic appeal.

19. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) as applied to Claim 1 above, and further in view of Mitchell (U.S. Patent 4167783).

Whittington discloses the claimed invention as cited above, but does not specifically teach the pedestal configured to have a plurality of portions selectively displaceable relative to the base so as to modify the width of the pedestal and to increase stability of the floor lamp (re: Claim 9); the plurality of portions of the pedestal including multiple segments and base elements, each of the multiple segments having a generally T-shaped cross-section configured to have a foot and two shoulders, the base elements each being juxtaposed with an underside of the shoulders and slidably coupled therewith so that the base elements and the segments are slidable relative to one another (re: Claim 10); nor teaches a plurality of guiding elements including multiple mating formations formed between the base elements and segments (re: Claim 11).

Mitchell teaches a floor lamp including a pedestal [Figure 1: (34)] having a plurality of portions [Figure 1: (20, 24a-d)] selectively displaceable relative to one another and to a base [Figure 1: (18)] so as to modify the width of the pedestal and to increase stability of the floor lamp. In addition, Mitchell teaches the plurality of portions including multiple segments [Figure 1: (20)] and base elements [Figure 1: (24a-d)], whereby the base elements are juxtaposed and slidably coupled with an

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undersides/shoulders of the segments such that the base elements and the segments are slidable relative to one another via a plurality of guiding elements including multiple mating formations [Figure 1: between (20 and 24a-d)].

Though Whittington nor Mitch specifically teaches each of the multiple segments having a generally T-shaped cross-section configured to have a foot and two shoulders, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate such a cross-section with foot and shoulders, since it has been held to be within the general skill of a worker that mere change of form or shape of an invention involves only routine skill in the art. *Span-Deck Inc. c. Fab-Con, Inc.* (CA 8, 1982) 215USPQ 835. In this case, it is obvious that the prior art of Mitchell is functionally equivalent, wherein the cross section does not functionally differentiate itself from the prior art.

Therefore, it would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the expandable pedestal of Mitchell in order to provide a more compact unit when traveling and an expandable and stable unit during use.

20. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) in view of Smith (U.S. Patent 3387896).

With regards to Claim 13, Whittington discloses a floor lamp including:

- A pedestal [Figure 1: (20)];
- A base [Figure 1: (40)] having at least upper [Figure 1: (36)] and lower parts [Figure 1: (28)], whereby the base is attached at the lower part to the

pedestal, and the ratio of the length of the base to the width of the pedestal is less than or equal to 6:1;

- A housing [Figure 1: (32)] attached to the upper part of the base and attachable to a light source [Figure 3: (12)] for providing light therefrom; and
- A container [Figures 1, 3: (34)] having at least an underside [Figures 1, 3: proximate (30)] that is attached to the housing, and wherein the light from the light source in the housing can be directed to the underside of the container.

Whittington does not specifically teach a liquid motion lamp container having a light source contained therein and attached at the upper parts of the base.

Smith teaches a liquid motion lamp [Figures 1-2] including a container [Figure 1: (11)] having a light source [Figure 2: (13)] disposed therein.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the liquid motion lamp of Smith so as to enhance the aesthetic appeal of said lamp. In addition, it would have been obvious to one ordinarily skilled in the art at the time of invention to mount the liquid motion lamp of Smith to the pedestal of Whittington to provide greater illumination to surrounding areas via a higher disposition. Such a configuration is commonly known within the art and would also add to the conspicuousness of the liquid motion lamp/display.

21. With regards to Claim 14, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the ratio of the cumulative

length of the base, the housing, and the container to the width of the pedestal being less or equal to 7:1.

22. With regards to Claim 15, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the pedestal being substantially circular in shape and the width of the pedestal including the diameter of the pedestal [Figure 1: (20)].

23. With regards to Claim 16, Whittington in view of Smith discloses the claimed invention as cited above. In addition, Whittington teaches the base [Figure 1: (40)] being substantially cylindrical in shape.

24. With regards to Claim 17, Whittington in view of Smith discloses the claimed invention as cited above, but neither specifically teaches the liquid motion lamp container being substantially cylindrical in shape. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the container into a cylindrical shape, since it has been held to be within the general skill of a worker that mere change of form or shape of an invention involves only routine skill in the art. *Span-Deck Inc. c. Fab-Con, Inc. (CA 8, 1982) 215USPQ 835*. In this case, a cylindrical shaped container may add to aesthetic appeal.

25. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Whittington (U.S. Patent 5954426) as applied to Claim 18 above, and further in view of Mitchell (U.S. Patent 4167783).

Whittington discloses the claimed invention as cited above, but does not specifically teach the pedestal having a plurality of portions displaceable relative to one another and to the base to modify a width of the pedestal.

Mitchell teaches a floor lamp including a pedestal [Figure 1: (34)] having a plurality of portions [Figure 1: (20, 24a-d)] selectively displaceable relative to one another and to a base [Figure 1: (18)] so as to modify the width of the pedestal and to increase stability of the floor lamp.

It would have been obvious to one ordinarily skilled in the art at the time of invention to modify the floor lamp of Whittington to incorporate the expandable pedestal of Mitchell in order to provide a more compact unit when traveling and an expandable and stable unit during use.

***Allowable Subject Matter***

26. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Applicant recites a plurality of portions that are cumulatively configured to provide a substantially continuous outer periphery of the pedestal having a relatively small diameter, whereby said portions extend to an outer position such that the pedestal has a relatively large diameter. The prior art fails to teach or suggest the combination of structural elements disclosed and claimed herein, and all subsequent dependent claims are allowed.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art pertinent to the current application, but are not considered exhaustive:

US Patent 685110 to Crouch;

US Patent 1856098 to Green;

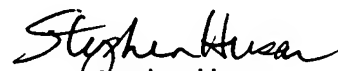
US Patent 6309084 to Lin;

US Patent D370290 to Papillon.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen Husar  
Primary Examiner